

VOLUME 7

Title 114

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NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

TITLE 114 - LANDFILL CLOSURE ASSISTANCE FUND

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GOVERNOR

EFFECTIVE DATE:

LANDFILL CLOSURE ASSISTANCE FUND
STATE OF NEBRASKA
DEPARTMENT OF ENVIRONMENTAL QUALITY

SEP 27 1994

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Title 114 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 1 - DEFINITIONS

001 "Applicant" means a political subdivision which owns or operates or has previously owned or operated a landfill or any entity which owns or operates or has previously owned or operated a licensed landfill in the State of Nebraska applying for a grant from the fund pursuant to these regulations.

002 "Application" means an application for a grant under the fund on a form prescribed by the Department.

003 "Assessment" means the process utilized by the applicant to determine the steps required, consultation needed, and applicable rules and regulations relating to the closure of a landfill site.

004 "Closure" means those actions which are taken upon the cessation of the use of a solid waste landfill which prepares the solid waste disposal area for post-closure care and assures the protection of human health and the environment.

005 "Council" means the Nebraska Environmental Quality Council.

006 "Department" means the Nebraska Department of Environmental Quality.

007 "Director" means the Director of the Nebraska Department of Environmental Quality.

008 "Equipment" means all personal property and fixed assets other than land and buildings purchased by a grantee with grant funding to carry out activities approved by the Director.

009 "Fund" means the Solid Waste Landfill Closure Assistance Fund.

010 "Grant" means funds allocated by the Director from the fund under conditions as prescribed by the Director.

011 "Grantee" means the applicant and its representatives receiving funds to carry out activities approved by the Director based on the application and grant award.

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012 "Landfill" means a discrete area of land which has been used for disposal of solid waste.

013 "Match" means matching funds or services from the applicant for out-of-pocket expenses directly related to the project and approved by the Director.

014 "Monitoring" means the combination of activities designed to assess the impact of the solid waste disposal area upon the environment.

015 "Political Subdivision" means a division of the State formed pursuant to proper authority for the purpose of carrying out governmental or public functions, and includes counties, townships, cities, villages, districts, authorities, and other public corporations and entities, whether organized and existing under direct provisions of the Constitution of Nebraska or statutes of this State, or by virtue of charters or other corporate articles or instruments executed under authority of such constitution or laws.

016 "Program Priority System" means the system used to identify priority programs for funding. Available funds will be allocated among the priority programs according to their ranking.

017 "Program" means a project or plan incorporated in a grant application to be considered for receiving a grant from the fund.

018 "Remediation" or "remedial action" means any immediate or long term response to a pollution occurrence including cleanup, restoration, mitigative actions, and any other action approved or required by the Department.

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019 "Solid Waste" means any garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and mining operations, and from community activities, but does not include solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended, 68 Stat. 923.

Legal Citation: Title 114, Ch. 1, Nebraska Department of Environmental Quality

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Chapter 2 - ELIGIBILITY

001 Eligible Applicant. An applicant must be a political subdivision which owns or operates or has previously owned or operated a landfill or any entity which owns or operates or has previously owned or operated a licensed landfill in the State to be eligible for grant funding.

002 Eligible Activities. Grants may be approved for one or more of the following activities at landfills existing or already closed on July 15, 1992;

002.01 Landfill site closure assessment;

002.02 Landfill site closure;

002.03 Monitoring activities; and

002.04 Remediation activities.

003 Cost Reimbursement. Reimbursement of costs for landfill site closure assessment, landfill site closure, monitoring, or remediation when such activities were completed prior to submission of the grant application, are eligible for grant funding.

Enabling Legislation: Neb. Rev. Stat. §81-15,177

Legal Citation: Title 114, Ch. 2, Nebraska Department of Environmental Quality

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Chapter 3 - GENERAL REQUIREMENTS

001 Procurement Standards. Political subdivisions will use procurement procedures which reflect applicable state and local laws and regulations when soliciting the services of an engineer or contractor or purchasing equipment. Private businesses also are required to use a competitive procurement process when using grant funds to solicit the services of an engineer or contractor or purchase equipment. Procurement files must be available for review and/or audit by Department staff upon request.

002 Required Closure Procedures. The applicant shall follow the solid waste landfill closure procedures as outlined in 40 CFR Part 258, Section 258.60(a) for sites receiving waste after October 9, 1991 but halting prior to October 1, 1993. Sites closed prior to or after these dates shall have adhered to the federal and/or state regulations in force at the time of closure. Sites granted deadline extensions as stated in Title 132 must adhere to the applicable provisions of the extension.

003 Project Changes. The applicant must notify the Department of all changes occurring in the original application. Only changes approved by the Department will be eligible for grant funds.

004 Timely Beginning. The applicant must agree to promptly initiate the program activities upon notification of grant award as described in Chapter 4, 003.09.

005 Grant Period. The grant period shall be a set period of time based on activities approved for grant funding. All grant funding must be encumbered during the grant period approved by the Director. Funds not encumbered during the designated grant period will revert back to the fund. Return of unused funds is the grantee's responsibility.

006 Extension Requests. The grantee may request an extension of the grant period. The request must include justification for need of the extension. All extensions shall be approved by the Department.

007 Earned Interest. Any and all interest earned by grant funds is considered a part of the grant and is subject to the same restrictions and requirements as grant funds.

Enabling Legislation: Neb. Rev. Stat. §81-15,177.

Legal Citation: Title 114, Ch. 3, Nebraska Department of Environmental Quality

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Chapter 4 - APPLICATION PROCEDURES

001 Application Deadlines. The initial deadline for grant applications is July 1, 1994. Thereafter, applications will be submitted on an annual basis, due no later than April 1 of each year or the next working day if April 1 falls on a non-working day. Applications will be accepted through April 1, 1997 or until all funds are disbursed.

002 Application Address. All applications shall be submitted to the Nebraska Department of Environmental Quality, Landfill Closure Assistance Fund.

003 Application Form. A grant application shall be submitted on a form provided by the Department which, at a minimum, includes the following information:

003.01 Name and address of applicant;

003.02 The nature and purpose of the proposed activities;

003.03 A plan for the proposed program which includes appropriate engineering, economic and feasibility data, other data and information, and such estimated costs as required by the Department;

003.04 When appropriate, state that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the project and related lands;

003.05 Show that the applicant possesses all necessary authority to undertake or participate in the proposed program;

003.06 Demonstrate the anticipated environmental and ecological benefits that shall result from such proposed program;

003.07 A comprehensive line item budget detailing all program costs;

003.08 A statement agreeing to use funds only for activities as listed in Chapter 2;

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003.09 A time-line of activities which clearly indicates a proposed beginning and ending date;

003.10 The signature of the chairperson or president of the applicant's governing body or its authorized agent on each grant application form provided by the Department; and

003.11 Other information as required by the Department.

004 Policy Compliance. The applicant shall provide the Director with a statement of compliance with State Affirmative Action requirements and a copy of its Drug Free Workplace Policy.

Enabling Legislation: Neb. Rev. Stat. §§81-15,177; 81-15,178

Legal Citation: Title 114, Ch. 4, Nebraska Department of Environmental Quality

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Chapter 5 - METHOD OF GRANT AWARDS

001 Application Ranking. Grant applications will be ranked based on points established in the Program Priority System as authorized by Chapter 10.

002 Allocate Funds. The Director shall allocate the grant funds for a specific dollar amount to be used only for approved activities.

003 Notification. The Director shall provide, in writing, notification of grant awards or denials to the applicant.

004 Redistribution of Funds. In the event that one or more of the applicants awarded funding is unable to accept the grant award, or having accepted returns it to the Department due to inability to perform, the Director may award grant funding to the next highest ranked applicant(s) in that funding cycle or the award may be returned to the fund.

005 Application Denial. Written notice of the denial of application shall be given by the Director to the applicant.

005.01 Applications shall be denied by the Department, as a result of, but not limited to, any of the following reasons:

005.01A Failure to submit a complete application by the published deadline as described in Chapter 4, 001.

005.01B Falsification or misrepresentation of information.

005.01C Failure to comply with pertinent regulations.

006 Application Re-submission. An application that fails to be funded may, at the request of the applicant, be re-scored in the priority system for funding during one successive grant period.

006.01 An application that fails to be funded for two consecutive grant periods must be resubmitted on dates designated in Chapter 4 to be reconsidered for future funding.

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007 Disbursement of Grant Funds. Funds shall be disbursed to the grantee in one lump-sum payment or an alternate method as determined by the Department after notification of award.

Enabling Legislation: Neb. Rev. Stat. §§81-15,177; 81-15,179

Legal Citation: Title 114, Ch. 5, Nebraska Department of Environmental Quality

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Chapter 6 - TERMS FOR REIMBURSEMENT OF PAST COSTS

001 Closed Sites. Applicants that have completed the closure activities of their solid waste landfill are eligible for reimbursement of eligible costs. In order to determine eligibility for reimbursement, the applicant must provide documentation of the process used in closing their site. All conditions for proper closure must be met to be eligible for reimbursement. This documentation includes, but is not limited to, the following:

001.01 Landfill site closure assessment;

001.02 Vector control (if appropriate);

001.03 Fire extinguishing (if appropriate);

001.04 Final cover information (i.e. soil type or permeability, slope, seeding);

001.05 Current and future use of the landfill site; and

001.06 The applicant should provide a map indicating the final contours and landscaping of completed solid waste disposal area including:

001.06A Site boundaries and location;

001.06B Solid waste lateral location;

001.06C Facility structures;

001.06D Permanent monitoring devices; and

001.06E Access control structures.

001.07 Certification by the applicant that all costs are true and accurate under penalty of law.

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002 Current Conditions. Provide the Department with a statement indicating the current condition of the site. This includes results of any soil and/or ground water tests completed since closure.

003 Verification of Payment. The applicant must provide verification of payment for all items for which they are requesting reimbursement.

Enabling Legislation: Neb. Rev. Stat. §§81-15,177; 81-15,179

Legal Citation: Title 114, Ch. 6, Nebraska Department of Environmental Quality.

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Chapter 7 - FUNDING ACCOUNTABILITY

001 Progress Reports. Grantees, for other than reimbursement grants, shall keep financial records for the program and shall submit quarterly progress reports to the Department during the grant period. Failure to submit the required progress reports is grounds for the withdrawal of any grant and denial of consideration for any subsequent grants.

002 Report Form. The Department shall provide a copy of the progress reporting form to be used for each required report. Each grantee's progress reports shall include, but not be limited to, the following:

002.01 A Comprehensive line-item expenditure report of all grant funds, including any interest earned on grant funds and all other funding utilized to carry out the program;

002.02 Copies of all receipts for expenditures of grant funds, matching funds, and interest earned on grant funds;

002.03 Summary of accomplishments addressing those objectives and goals stated in the approved application;

002.04 An inventory of all equipment purchased with grant funding including model number and serial number, and copies of purchase receipts; and

002.05 Any additional information required by the Department.

003 Program and/or Budget Modifications. If a grantee wishes to modify a program and the expenditures of grant funds and expenditures of interest earned on the grant funds, the grantee must submit a revised grant application and revised comprehensive line-item budget to the Department at least 30 days prior to the requested changes with an explanation of why the grantee is unable to utilize funding as previously approved by the Director. The Director will approve or deny any grantee's proposed program and budget modifications.

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004 Non-approved Modifications. The grantee is required to follow the approved method for expenditures of grant funds. Any modifications on the approved grant application and expenditures of grant funds, not approved by the Director, are grounds for withdrawal of any grant and denial of consideration for any subsequent grants.

Enabling Legislation: Neb. Rev. Stat. §81-15,177

Legal Citation: Title 114, Ch. 7, Nebraska Department of Environmental Quality

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Chapter 8 - GRANT CONDITIONS AND PENALTIES

001 Conditions. Grantees will comply with grant conditions as specified by the Director. These conditions include, but are not limited to, the following;

001.01 Compliance with all requirements as stated in these regulations;

001.02 Compliance with audit requirements of the Department;

001.03 Maintenance of adequate and accurate records;

001.04 Completion of program activities within the grant period;

001.05 Submission of reports according to established deadlines; and

001.06 Expenditure of grant funds as approved by the Director.

002 Penalties. Penalties may result from a violation of these regulations or of specific grant conditions. Penalties shall include withdrawal of grant funds, reimbursement of improperly expended funds, ineligibility for future funding, or any combination of the three.

Enabling Legislation: Neb. Rev. Stat. §81-15,177

Legal Citation: Title 114, Ch. 8, Nebraska Department of Environmental Quality

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Chapter 9 - EQUIPMENT

001 Accountability. Equipment purchased with grant funds is subject to reporting and inventory maintenance as follows:

001.01 Equipment purchased with grant funds shall be used only for purposes described in the grant.

001.02 The Department shall provide the grantee with an equipment inventory form which shall be completed and submitted with each progress report.

001.03 After the conclusion of the designated grant period, it is the grantee's responsibility to maintain an equipment inventory listing of all equipment purchased with grant funds and respond to the Department's request for annual updates on the status of the equipment.

001.04 The termination of equipment inventory updates shall be in conjunction with the effective service life of the equipment.

002 Equipment Disposition. The Director shall approve the sale of equipment purchased with grant funds. Funds realized from the sale of equipment purchased with grant funds, shall revert to the fund, in an amount congruent with the grant funded percentage of the equipment's original cost.

003 Equipment Redistribution. Any equipment purchased with grant funding which is no longer of use to the original grantee's program, may be redistributed by the Director to another eligible grantee. The Department will announce the availability of the equipment and accept equipment redistribution grant applications on an annual basis.

003.01 The Director shall redistribute the equipment based on the applicant's ability to comply with the grant application's requirements as stated in Chapters 2 and 3, and on the application's ranking on the Program Priority System.

003.02 Equipment redistributed to another eligible grantee shall be used only for the purposes stated in the grant application.

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003.03 The grantee awarded the equipment shall submit quarterly progress reports for the grant period designated by the Director.

003.04 The Department shall provide the grantee with an equipment inventory form which shall be completed and submitted with each progress report during the grant period.

003.05 After the conclusion of the designated grant period, it is the grantee's responsibility to maintain an equipment inventory listing of all equipment awarded through the Department's redistribution of equipment process, and respond to the Department's request for annual updates on the status of the equipment.

003.06 The termination of the equipment inventory updates shall be in conjunction with the effective service life of the equipment.

Enabling Legislation: Neb. Rev. Stat. §81-15,177

Legal Citation: Title 114, Ch. 9, Nebraska Department of Environmental Quality

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Chapter 10 - PROGRAM PRIORITY SYSTEM

001 A Program Priority System will be prepared by the Department and presented in a public hearing before the Council to receive public input and approval by the Council. Each element in the Program Priority System will be given a numerical score by which to rank each application. This ranking will be used to determine priority applications for funding.

Enabling Legislation: Neb. Rev. Stat. §81-15,177

Legal Citation: Title 114, Ch. 10, Nebraska Department of Environmental
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Chapter 11 - SEVERABILITY; APPEALS, AMENDMENTS, OR REPEALS; AND EFFECTIVE DATE

001 Severability. If any clause, paragraph, subsection, or section of these regulations shall be held invalid, it shall conclusively be presumed that the Environmental Quality Council would have enacted the remainder of these regulations not directly related to such clause, paragraph, subsection or section.

002 Appeals. Any appeal from any final order or final determination of the Director shall be pursuant to §§81-1509.

003 Amendments and Repeals. These rules and regulations shall be amended or repealed pursuant to the Rules of Practice and Procedures of the Department of Environmental Quality. These procedures shall conform in all respects to §§84-901 thru 84-919.

004 Effective Date. These rules and regulations shall become effective five (5) days after filing with the Secretary of State.

Enabling Legislation: Neb. Rev. Stat. §§81-1509; 84-901 thru 84-919;
81-1505(18)

Legal Citation: Title 114, Ch. 11, Nebraska Department of Environmental
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